IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

MACA.No. 980 of 2006()

OPMV.1251/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT/PETITIONER

K.V.JOY, S/O.VARKEY,
KOROTTVARAKKAL HOUSE, P.O.VADAKKANCHERRY.

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS:
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1. PRAKASAN, S/O.RAGHAVAN,
THAIPARAMBIL HOUSE, ALANGAD,
P.O.KOLLUR. (DELETED)

2. A.B.PAULSON, AVITTATHUKARAN HOUSE,
P.O.KALLUR. (DELETED)

3. THE ORIENTAL INSURANCE CO. LTD.,
BRANCH OFFICE, CITY HIGHTS BUILDING,
CHALAKUDY.

RESPONDENTS 1 AND 2 ARE DELETED FROM THE PARTY ARRAY VIDE ORDER DT. 17.8.06 IN IA. 15.9.06 AT THE RISK OF THE APPELLANT.

BY ADV. SRI.S.MAMMU

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 20/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.A.C.A. No. 980 of 2006

Dated this the 20th day of June, 2007

Judgment

Koshy, J.

Appellant was the claimant in O.P. (M.V.) No.1251 of 2000 on the file of Motor Accidents Claims Tribunal, Thrissur. The averments, in brief, in the claim petition were that on 30.4.2000 at about 4.00 p.m. when the appellant was riding a motor cycle bearing registration No. KER 1622, a bus bearing registration No. KL/8-D 7677 owned by the second respondent driven by the first respondent and insured by the third respondent hit on the back side of the motor cycle at Muttithadi and the appellant sustained severe injuries. The injuries alleged are lacerated wound and contusion right cheek, lacerated wound lize in right upper eye lid, fracture parietal bone on left side and further alleged that he was aged 36 and earning a monthly income of Rs.3,500/- as an autorickshaw driver. The appellant filed a claim petition for Rs.6,00,000/-. Tribunal granted only compensation of Rs.2,12,400/- though found that accident occurred due to the negligence of the driver of the

vehicle insured by the third respondent insurance company. Only dispute is regarding the quantum of compensation.

2. Evidence in this case consist of the oral evidence of PW1 and Exts. A1 to A14 were also marked on the side of the appellant and no evidence was adduced either oral or documentary from the side of the respondents. Exts.A12 and A13 are two disability certificates issued by the doctors who treated the appellant and in Ext.A12 hearing disability of the appellant was noted as 78% and other disabilities are Bilateral anosmia, left complete facial palsy, left facial bypassthesia with tursorreapy and tendency to fall leading to disability amount of 35%. In Ext.A13 is the disability certificate issued by Ophthalmologist of Divine Medical Centre, Vadakkancherry reporting 20% disability. It is further stated that due to the accident, the appellant was an inpatient from 30.4.2000 to 5.5.2000 and in Ext.A5 discharge card issued from the Medical College, Thrissur shows that soft tissue injury in road traffic accident was fracture to temporal bone and occipital bone also noted. In Ext.A7 medical prescription from Ophthalmology department and in Ext.A8

C.T. report shows fracture occipital bone on left side and petrous temporal bones on left side.

3. According to the appellant, he suffered 100% disability. He cannot do the work of an autorickshaw driver or any other work and his earning capacity is lost completely. Tribunal has taken only 35% disability and calculated compensation taking Rs.24,000/- as annual income (Rs.2,000/- monthly) and multiplier 16. According to him, he was earning Rs.3,500/- per month and contended that an autorickshaw driver could have earned at least Rs.3,000/- per month in the year 2000, the year of accident. We are of the opinion that as an autorickshaw driver, he will be getting a minimum daily income of Rs.100/- and 25 days work in a month. Hence, at least Rs.2,500/- can be taken as monthly income. Since whole body disability was not assessed, we referred the appellant to the medical board for assessment of disability. He was examined by a medical board of five experts including Assistant Professor of Neuro Surgery, Senior Lecturer in Ophthalmology and Assistant Professor of ENT of Government Medical College, Thrissur and certified that there is 58% permanent disability. Even though we are not granting compensation for loss of earning capacity and disability at 100%, we are of the opinion that compensation can be granted for disability

and loss of earning capacity taking 58% disability as assessed by the medical board. Therefore, compensation payable will be Rs.2500 x 12 x 16 x 58/100 = Rs.2,78,400/-.

Tribunal has awarded Rs.1,34,400/- for disability and Rs.20,000/- for loss of earning power. Deducting the same, claimant will be entitled to Rs.1,24,000/-. Even though it is argued that compensation granted in all other respects are meagre, considering the total amount, we are not enhancing the amount in other heads. Appeal was filed with a delay of 515 days. Considering the treatment and medical certificate, we have condoned the delay. But, in the above circumstances, claimant is entitled to interest and the additional amount awarded only from the date of appeal. Third respondent insurance company is directed to deposit the amount of Rs.1,24,000/= with 7% interest from 20.5.2006 (date of filing the appeal) till deposit.

Appeal allowed partly.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.A.C.A.No.980/2006

JUDGMENT

Dated:20th June, 2007